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In the Matter of CITY OF JERSEY CITY, a
 Municipal Corporation of the State of New
 Jersey, MAYOR STEVEN FULOP,
 ROBERT BYRNE, Charged with Contempt
 of Court

 Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: HUDSON COUNTY

Docket No.

Civil Action

COMPLAINT

One Journal Square Partners Urban Renewal Company LLC, One Journal Square Tower
 North Urban Renewal Company LLC, and One Journal Square South Urban Renewal Company
 LLC (collectively “OJS”), through their undersigned counsel Sills Cummis & Gross P.C., hereby
 complain as follows:

OVERVIEW OF DISPUTE

1. Defendants Jersey City, its Mayor Steven Fulop, and its Clerk Robert Byrne have
 now spent four months in flagrant disregard for the Court’s binding Orders. Following entry of
 the Court’s Order of December 28, 2018, compelling Defendants to turn over OPRA materials,
 the Court has given Defendants every opportunity over four months to bring themselves into
 compliance with the Turn-Over Order. Yet, during a hearing on April 2, 2019, some 96 days
 after the Order, when the Court asked about the status of compliance, the City responded that
 there had been “no effort” and “[w]e haven’t started.” The Court held the City in violation of the
 Order because “[compliance] should have been done by now. . . when [Plaintiffs’ counsel] says

that the City is really ignoring a court order he's right on that mark." The Court also entered sanctions against the City and warned that if it had to enter a third Order, it may be one for contempt of court:

[THE COURT:] [I]f the City doesn't comply with this second order telling you to do what I told you to do back then - . . . if I have to sign a third order to enforce my prior order, you know, things can then become unpleasant. . . Like as in very costly. Possibly somebody can be held in contempt.

But Defendants did not comply or produce the responsive communications required by the Order. Instead of take the generous opportunity provided to them by the Court, Defendants responded: by filing multiple frivolous - and quickly rejected - emergent applications with the appellate division; by admittedly refusing to even begin searching their records for material related to the Order; and by posting on social media that "taxpayers should not be required to subsidize a pointless fishing expedition," proclaiming "[i]t is absurd and isn't going to happen in Jersey City." Defendants are in open defiance of the judiciary's authority. Every other available alternative has already been tried and failed—lawfully entered Orders, verbal warnings, and even sanctions—but it is now clear that the only remaining measure that will move these recalcitrant Defendants is to hold them in contempt.

PARTIES

2. One Journal Square Partners Urban Renewal Company LLC is a New Jersey limited liability company with its principal place of business located at 100 Challenger Road, Suite 401, Ridgefield Park, New Jersey.

3. One Journal Square Tower North Urban Renewal Company LLC is a New Jersey limited liability company with its principal place of business located at 100 Challenger Road, Suite 401, Ridgefield Park, New Jersey.

4. One Journal Square South Urban Renewal Company LLC is a New Jersey limited liability company with its principal place of business located at 100 Challenger Road, Suite 401, Ridgefield Park, New Jersey.

5. Defendant Mayor Steven Fulop, upon information and belief, is a resident of New Jersey and an employee of the City of Jersey City.

6. Defendant Robert Byrne, Clerk of the City of Jersey City, upon information and belief, is a resident of New Jersey and an employee of the City of Jersey City.

7. City of Jersey City is a municipal corporation, incorporated as a body politic in Hudson County, New Jersey.

VENUE

8. Venue is proper in Hudson County because the City is in Hudson County, the Clerk of the City of Jersey City works in Hudson County, the Orders that Defendants have violated were issued by the Hudson County Superior Court

BASIS FOR INITIATION OF CONTEMPT PROCEEDINGS

9. For the second time in four months, the Court has commanded Defendant City of Jersey City to turn over public records pursuant to the Open Public Records Act (“OPRA”). It has given Defendants every possible opportunity over the course of 116 days to come into compliance with the Court’s validly entered December 28, 2018 Order (the “Turn-Over Order”). Yet the City, and the public officials charged with its operations, Mayor Steven Fulop, and Municipal Clerk Robert Byrne (collectively “Defendants”) remain in open defiance of the Court’s rulings. The Court should enter an Order to Show Cause initiating contempt proceedings against Defendants.

a. **OJS's Filing Of The OPRA Action**

10. OJS invested resources into a highly complex \$900 million real estate transaction. But over the past several years, progress on OJS's Journal Square development project has been obstructed by the City of Jersey City and Mayor Steven Fulop. OJS filed a lawsuit, pending before the United States District Court for the District of New Jersey, captioned One Journal Square Partners Urban Renewal Co. LLC, et al. v. Jersey City Development Agency, City of Jersey City, and Steven Fulop, No. 2:18-cv-11148 alleging, among other things, violation of OJS's constitutional due process and equal protection rights, including Defendants' unequal treatment of Plaintiffs as compared to similar redevelopment projects in Jersey City with respect to permitting construction, PILOTs, and RABS.

11. Beginning on June 26, 2018, OJS submitted three OPRA requests to the City seeking information regarding the City's treatment of OJS and various other property developers with respect to tax abatement applications.

12. The City repeatedly represented they were "conducting its search and two additional weeks are needed," resulting in OJS consenting to three (3) two-week adjournments of the statutory seven-business-day deadline for OPRA responses. At the City's request, OJS repeatedly narrowed their OPRA inquiries based on the City's representations that it would be more manageable to search and obtain such documents. After repeated delays, on September 12 and September 26, 2018 the City summarily served a wholesale denial of Plaintiffs' OPRA requests. Defendants refused to produce any documents.

13. On September 28, 2018, OJS filed a Complaint in the Superior Court, Law Division, Hudson County, entitled One Journal Square Partners Urban Renewal Company LLC, et al. v. City of Jersey City and Robert Byrne, HUD-L003888-18, before the Hon. Francis B.

Schultz, J.S.C., to obtain access to the government records requested in all three denied OPRA requests. See Compl., Fiorenzo Cert. Ex. A.

B. OJS Obtained A Turn-Over Order From The Court Compelling Defendants To Provide All Of “The Documents Requested” In OJS’s OPRA Request

14. The OPRA proceedings were protracted including initial briefing, appearance for oral argument, two weeks of subsequent settlement discussions encouraged by the Court, preparation and appearance for a full hearing with witness testimony.

15. Defendants repeatedly delayed the proceedings and obstructed an equitable and speedy resolution. On November 30, 2018, the Court met in chambers with counsel to the parties and noted the lack of certification from the City or any witness statements in response to Plaintiffs’ Order to Show Cause.

16. As the Court later noted, the scope of the litigation “gr[e]w because there was nothing in certified form from the City backing up their position. It was like a legal conclusionary position . . . Had nothing specific – I believe I didn’t have any certifications from anybody [from the City] -- . . . – so I had no choice but in order to give the City a fair shake at the hearing I allowed [the City] to amplify [its] position . . . with testimony.” Fiorenzo Cert. Ex. H, Sanctions Hearing Tr. 36:10-25 (Apr. 2, 2019).

17. The OPRA hearing was adjourned, and a five-hour evidentiary hearing with live testimony was conducted on December 13, 2018.

18. The Court granted Plaintiffs’ Order to Show Cause on December 28, 2018, and ordered Defendants to provide all of “the documents requested” in Plaintiffs’ three OPRA requests within 20 days. Fiorenzo Cert. Ex. B.

[I]t is on this 28th day of December 2018, **Ordered** that the defendants shall provide the documents requested in OPRA request #1, amended OPRA request #2 and OPRA request #3 within twenty days of the date of this order, and **IT IS**

FURTHER ORDERED that the plaintiffs shall be considered the "prevailing" parties for purposes of attorney 's fees

19. The Court "noted that the City indicated that it was conducting its search and requested more time in response" in its communications with counsel for OJS regarding the OPRA requests. Ex. B, Op. at 2. But in reality, "[t]he court agrees with the plaintiffs that no real effort was made by the defendants to locate the requested documents. [The Clerk's] testimony, while essentially credible, reflected an unwillingness to attempt to retrieve those documents. . ."

20. Among other things, the Court held that the documents requested were "easily identifiable" and capable of production, and that the City repeatedly stated it was conducting a search for such documents:

The court is well satisfied that the documents requested in OPRA request #1 (P-3) were readily identifiable records subject to disclosure under OPRA. No one contended that any of the exceptions applied. . . None of the three requests required discretion or "research" on the part of the defendants and these are not the type of documents which would have required a search that would have interrupted the agency operations. Even if they did (which they did not) the defendants did not attempt to reach a reasonable solution that would accommodate the interests of the requester and the agency.

Opinion at 5.

C. For Three Months, Defendants Defied The Turn-Over Order, Forcing Plaintiffs To Obtain An Additional Order In Aid Of Litigants' Rights Adjudicating The City In Violation Of Its Court-Ordered Obligations, With The Court Warning The City Of The "Unpleasant" Consequences If Defendants Stubbornly Persist In Noncompliance For A Third Time

21. Despite being reprimanded in the Judge's written opinion for failing to even undertake a search for records, Defendants admittedly did not begin a good faith review for responsive documents following the Court's order; nor did they produce any materials to OJS.

22. Instead, Defendants waited until the last day of the Court's January 17, 2019 deadline, using its time and resources to file a motion seeking a stay and a motion for leave to appeal.

23. No stay was granted and the Appellate Division declined to accept the interlocutory appeal on February 15, 2019.

24. Even after the denial of Defendants' motion for leave to appeal, Defendants' persisted in their obstruction of the Court's Turn-Over Order.

25. Having received no responsive documents since entry of the Court's Turn-Over Order, on February 7, 2019, OJS filed a Cross-Motion in Aid of Litigants' Rights to enforce the December 28, 2018 Order.

26. OJS also served numerous letters upon Defendants advising them that there was no justification for further disobedience of the Court's Order in light of the Appellate Division's rejection of the appeal and the absence of any stay of the Court's Order. See Letters Feb. 27, Mar. 4, Apr. 3, Apr. 10, 2019. Fiorenzo Cert. Ex. C.

27. Defendants exhausted their procedural options and were bound to immediately comply or face the punishment of sanctions. They opted to continue their noncompliance.

28. On April 2, 2019, the Court heard oral argument on OJS's Motion in Aid of Litigants' Rights.

29. Yet again, in response to OJS's motion and preparation for the appearance, Defendants steadfastly refused to even look at their records to identify the documents, much less produce the Court-ordered documents that were, by that point, over two-and-a-half months delinquent.

30. Under questioning from the Court, it became clear there was no dispute that Defendants were in violation:

[THE COURT:] I get the impression though, that there's no dispute that the bulk of what I ordered has not been turned over.

MR. McKINNEY: No, Your Honor, there's not.

Fiorenzo Cert. Ex. H, Sanctions Tr. 44:11-15.

31. The Court then noted that the City "had a lot of time since my order to comply," Tr. 61:20-22, and demanded to know "how far along are you now?" The City's response was: **"No, we haven't started it."** Tr. 46:22-47:2 (emphasis added). Indeed, the City admitted: "There's been no effort at this point because of the ruling to work with the City." Tr. 51:5-6.

32. Upon hearing the City's admission that not only had it violated the Order, it had yet to even attempt to review responsive documents, the Court expressed its concern regarding a party's defiance of judicial authority, noting that all courts have "inherent authority to enforce [its] own orders," Tr. 42:2-43:6, and gave the City every opportunity to provide an explanation:

THE COURT: Well, let me ask the City, why didn't you -- after I entered my order and there was no stay and I wasn't asking to give up, you know, I wasn't asking you to give up some great government secrets. . . I was asking you to give up information regarding tax abatements. . . **But why have you ignored my order when it's been around for a couple of months already.** The Appellate Division didn't hear you on an interlocutory basis. I didn't grant any stay. Why didn't you just, you know -- you know, suck it up go there, get those documents and just give it to them?

MR. McKINNEY: Your Honor -- . . .

THE COURT: -- why didn't you just do it and, then, go file your appeal and be -- or not, whatever, and be on your way? Why didn't you -- **why didn't you obey my order?** Courts -- Courts -- all Courts have the inherent authority to enforce their own orders. And that can sometimes become very unpleasant. **And I am surprised that the City is ignoring the court order.**

Tr. 42:2-43:6 (emphasis added).

33. But the City provided no remotely colorable explanation, offering that even though both a stay and interlocutory review were denied, it still wanted to appeal. The Court responded, “THE COURT: But you seem to be so clearly ignoring the fact that there is that order that hasn’t been stayed.” Tr. 55:13-15. With no stay in place, it did not matter that Defendants wanted to appeal, they were bound to obey now.

34. The Court held the City in violation of the Order, advised that it would be entering another order effective that same day “in aid of litigant’s rights telling you to immediately comply and I’ll put that on eCourts.” Tr. 61:20-22. The Court also made clear to Defendants the severe consequence of persisting in their obstruction of lawful Orders:

THE COURT: -- if the City doesn’t comply with this second order telling you to do what I told you to do back then –

MR. McKINNEY: I will instruct the Clerk’s Office to begin complying tomorrow, Your Honor.

THE COURT: Pardon?

MR. McKINNEY: I will instruct the Clerk’s Office to begin complying.

THE COURT: Yes, because, then, if I have to sign a third order to enforce my prior order, you know, things can then become unpleasant.

MR. McKINNEY: Understood.

THE COURT: Like as in very costly. Possibly somebody can be held in contempt. I don’t like to go in that direction. Let’s -- let’s be civilized about this.

Tr. 64:4-19 (emphasis added).

35. The Court entered an April 2, 2019 Sanctions Order in Aid of Litigants’ Rights, that declared Defendants to be in violation of the Court Order “as a result of Defendants’ failure

to comply with the outstanding Order dated December 28, 2018, requiring a turnover of those documents.” Fiorenzo Cert. Ex. D, Order at 2 (Apr. 2, 2019).

36. The Court compelled that “Defendants shall bring themselves in compliance with this Court’s Order by turning over all documents as required by the December 28, 2018 Order within no later than seven (7) days.” Id. (emphasis added). The Court also awarded counsel fees to Plaintiff pursuant to R. 1:10-3 for contempt to advance the private interest of litigants and coerce compliance with a Court Order. Id.

37. OJS served a letter on April 3, see Fiorenzo Cert. Ex. C, reminding Defendants that the Court stated it would consider further sanctions if Defendants continued to defy the Court by April 9, 2019.

38. But the deadline passed for a third time, without Defendants turning over any records pursuant to the Sanctions Order or responding to OJS.

39. OJS gave Defendants yet another opportunity, serving an April 10, 2019 letter. Fiorenzo Cert. Ex. E. OJS noted that Plaintiffs still had not received a single document since the entry of the Court’s Turn-Over Order three months earlier nor any communication regarding when the City would bring itself into compliance. OJS warned that if it did not receive the “all documents” responsive to the three OPRA requests immediately, as set forth in the Turn-Over Order and Order in Aid of Litigants’ Rights, it would have no alternative but file a motion for contempt against Defendants.

D. Defendants Wait Until The Second Deadline To Begin Looking At Their Records—After Nine Months Of OJS’s Requests And Two Court Orders—They Identify Responsive Communications But Elect To Flout The Courts’ Orders And Refuse Turn Over Documents

40. In response to the Court’s Orders, Defendants have expressed open defiance.

41. On January 2, 2019, days after the Turn-Over Order, Mayor Fulop published a comment on Twitter criticized the Court's OPRA Turn-Over Order, stating that the "taxpayers should not be required to subsidize a pointless fishing expedition" and proclaiming "[i]t is absurd and isn't going to happen in Jersey City." Fiorenzo Cert. Ex. F.

42. The day before the deadlines set forth in the Sanctions Order, Defendants first began their search for records, as they have since admitted in the City's Brief in Support Of Motion to Stay ¶ 10. Fiorenzo Cert. Ex. I.

43. Defendants identified 5,500 email communications and 27 redwelds that are responsive to the Turn-Over Order and Order in Aid of Litigants' Rights. Fiorenzo Cert. Ex. J, City's Mot. for Interlocutory Appeal. (Apr. 10, 2019).

44. But instead of turning over a single one of the emails that are admittedly compelled by the Court's Orders, some 116 days after initially compelled to turn over the documents, Defendants willfully ignored the Courts ruling and refused production.

45. On April 10, 2019, the day after the deadline, the City served a handful of documents from ordinance files. As set forth in Plaintiffs' letter dated April 11, 2019, the City's production includes none of the specifically identified 5,500 responsive emails and is otherwise woefully incomplete. Fiorenzo Cert. Ex. G.

46. Defendants also filed yet another application with the Appellate Division after the one denied on February 15, 2019. Even the Appellate Division, in denying the second of two motions for interlocutory relief on April 16, 2019, plainly stated Defendants' immediate obligations: "The timing of the application suggests that the emergency is self-generated. . . Defendant was ordered by the trial court on December 28, 2018 to provide the sought-after documents. On February 22, 2019, this court denied defendant's motion." Fiorenzo Cert. Ex. K, at 2.

47. Finally, on April 18, 2019, well beyond all conceivable deadlines for compliance, the City served a letter stating that it would take them an entire additional month, until May 10, 2019, to turn over correspondence and other electronic documents. Fiorenzo Cert. Ex. K, at 1.

48. Defendants still have not brought themselves into compliance, having failed to turn over any of the communications compelled to be turned over pursuant to the Court's Orders.

49. Defendants are in willful and contumacious violation of the Orders of this Court.

COUNT I

Initiation of Summary Contempt Proceeding Pursuant to R. 1:10-2

50. Each of the foregoing Paragraphs is incorporated as if fully set forth herein.

51. Rule 1:10-2 provides:

(a) Institution of Proceedings. Every summary proceeding to punish for contempt other than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of _____ Charged with Contempt of Court."

(b) Release Pending Hearings. A person charged with contempt under R. 1:10-2 shall be released on his or her own recognizance pending the hearing unless the judge determines that bail is reasonably necessary to assure appearance. The amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.

(c) Prosecution and Trial. A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney General, the County Prosecutor of the county or, where the court for good cause designates an attorney, then by the attorney so designated. The matter shall not be heard by the judge who instituted the prosecution if the appearance of objectivity requires trial by another judge. Unless there is a right to a trial by jury, the court in its discretion may try the matter without a jury. If there is an adjudication of contempt, the provisions of R. 1:10-1 as to stay of execution of sentence shall apply.

52. Defendants were fully aware of the Court's Turn-Over Order and Sanctions Order commanding Defendants to turn over documents, and had notice of same.

53. Defendants are admittedly capable of complying with the Court's Turn-Over Order and Sanctions Order. They have identified specific email communications responsive to the Orders and have calculated the number of such documents.

54. Defendants have willfully violated the Court's Turn-Over Order and Sanctions Order. Despite being twice ordered to immediately turn over the documents they have identified as responsive and decided to disobey by refusing to turn over same. The number of warnings to Defendants, their sheer persistence, and the responses to date demonstrate that Defendants' obstinacy is intentional.

55. Defendants' defiance of the Court's Orders have the effect of undermining the authority of the Court.

WHEREFORE, it is respectfully submitted that this Court enter an Order to Show Cause against the City as follows:

A. Ordering the initiation of summary proceedings against Defendants for Contempt of Court for violation of the Turn-Over Order and Sanctions Order pursuant to R. 1:10-2

B. Appointing the attorneys for OJS to prosecute the Contempt Proceedings.

C. Awarding OJS attorneys' fees and costs in connection with this application pursuant to R. 1:10-3 and the Open Public Records Act.

D. Ordering coercive measures against Defendants to secure compliance pursuant to R. 1:10-3, including escalating fines starting at \$1,000 per day and incarceration until such time as the Turn-Over Order and Sanctions Order are satisfied.

E. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,
SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiffs OJS

By: s/Joseph B. Fiorenzo
JOSEPH B. FIORENZO, ESQ.

Dated: May 1, 2019

Certification Pursuant to R. 4:5-1

I certify that the matter in controversy is not the subject of any other action or arbitration proceeding, except for the matters of One Journal Square Partners Urban Renewal Company LLC, et al. v. City of Jersey City and Robert Byrne, HUD-L003888-18, and One Journal Square Partners Urban Renewal Co. LLC, et al. v. Jersey City Development Agency, City of Jersey City, and Steven Fulop, No. 2:18-cv-11148 in the United States District Court for the District of New Jersey, described above. I further certify that no other presently known parties should be joined in this action pursuant to R. 4:5-1(b)(2).

s/Joseph B. Fiorenzo
 JOSEPH B. FIORENZO, ESQ.
 SILLS CUMMIS & GROSS P.C.
 Attorneys for Plaintiffs OJS

Certification Pursuant to R. 1:38-7(c)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from documents submitted in the future in accordance with Rule 1:38-7(b).

s/Joseph B. Fiorenzo
 JOSEPH B. FIORENZO, ESQ.
 SILLS CUMMIS & GROSS P.C.
 Attorneys for Plaintiffs OJS

Dated: May 1, 2019

In the Matter of CITY OF JERSEY CITY, a
Municipal Corporation of the State of New
Jersey, MAYOR STEVEN FULOP,
ROBERT BYRNE, Charged with Contempt
of Court,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Docket No.

Civil Action

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THE ENTRY OF AN
ORDER TO SHOW CAUSE INITIATING A PROSECUTION FOR CONTEMPT OF
COURT AGAINST JERSEY CITY, STEVEN FULOP AND ROBERT BYRNE**

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Table Of Contents

I.	PRELIMINARY STATEMENT	1
II.	STATEMENT OF FACTS	3
a.	OJS’s Open Public Records Requests Are Summarily Rejected By Defendants.....	3
b.	OJS Obtained A Turn-Over Order From The Court Compelling Defendants To Provide All Of “The Documents Requested” In OJS’s OPRA Request	4
c.	For Three Months, Defendants Defy The Turn-Over Order, Forcing Plaintiffs To Obtain An Additional Order In Aid Of Litigants’ Rights Adjudicating The City In Violation Of Its Court-Ordered Obligations, With The Court Warning The City Of The “Unpleasant” Consequences If Defendants Stubbornly Persist In Noncompliance For A Third Time.....	5
d.	Defendants Wait Until The Second Deadline To Begin Looking At Their Records—After Nine Months Of OJS’s Requests And Two Court Orders—They Identify Responsive Communications But Elect To Flout The Courts’ Orders And Refuse To Turn Over Documents	9
III.	LEGAL ARGUMENT.....	10
	<u>POINT ONE: AN ORDER TO SHOW CAUSE SHOULD BE ENTERED TO COMPEL CONTEMPT PROCEEDINGS AGAINST THE CITY, MAYOR FULOP, AND CLERK BYRNE FOR THEIR REPEATED AND STUBBORN DEFIANCE OF THIS COURT’S OPRA ORDERS.....</u>	10
a.	R. 1:10-2 Empowers The Court To Punish “Contumacious” Violations Of A Court Order With Fines And Imprisonment.....	10
b.	Local Government Officials’ Defiance Of Valid Court Orders Is Particularly Egregious Because It Inflicts Systemic Harm To The Judiciary’s Authority, Justifying Exercise Of The Court’s Inherent Power To Find Contempt Of Court And Impose Punitive And Coercive Measures Of Fines And Imprisonment	11
c.	Defendants’ Flagrant Disregard For The Court’s Orders Entered Over Four Months Ago—including Failure To Even Begin Examining Records After The Entry Of Two Court Orders—Falls Squarely Within Punishable “Contumacious” Conduct.....	13
d.	After A Prosecution And Finding Of Contempt, The Court Has A Full Panoply Of Measures At Its Disposal To Remedy The Harm	17
	<u>POINT TWO: DEFENDANTS SHOULD BE SANCTIONED PURSUANT TO R. 1:10-3, AND COERCIVE RELIEF ENTERED INCLUDING PAYMENT OF ATTORNEYS’ FEES IN THE PREPARATION OF THIS MOTION AND INCARCERATION UNTIL DEFENDANTS COMPLY WITH THE COURTS’ ORDERS.....</u>	18
	<u>POINT THREE: THE COURT SHOULD AWARD ATTORNEYS FEES PURSUANT TO THE OPRA STATUTE</u>	19
IV.	CONCLUSION.....	20

I. PRELIMINARY STATEMENT

Defendants Jersey City, its Mayor Steven Fulop, and its Clerk Robert Byrne, have now spent four months in flagrant disregard for the Court’s admittedly binding Orders, demonstrating the City believes this Court’s commands are meaningless and the threat of enforcement empty. It is wrong. Every other available alternative has already been tried and failed—lawfully entered Orders, verbal warnings, and even sanctions—but it is now clear that the only remaining measure that will move these recalcitrant Defendants is to hold them in contempt.

Three weeks ago, on April 2, 2019, the Court brought the parties in for a hearing for Defendants to offer some explanation why Jersey City still had not obeyed the Court’s December 28, 2018 Order (the “Turn-Over Order”) commanding the City to turn over public records pursuant to the Open Public Records Act (“OPRA”). By that time, 96 days had passed since the Court’s Turn-Over Order, during which time Defendants were afforded every possible opportunity to come into compliance. When questioned by the Court “why have you ignored my order when its’ been around a couple of months already . . . why didn’t you obey my order,” the City had no colorable justification and did not even dispute that its conduct was a clear violation of the Order. Indeed, when the Court pressed as to “how far along” the City was in bringing itself into compliance, the City astoundingly admitted **“[w]e haven’t started”** even reviewing documents and **“[t]here’s been no effort at this point** because of the ruling.” The Court made clear that it viewed the City’s conduct as defiance of judicial authority: “[compliance] should have been done by now. . . when [Plaintiffs’ counsel] says that the City is really ignoring a court order he’s right on that mark.” The Court informed the City it was “sign[ing] the order in aid of litigant’s rights telling you to immediately comply.” The Court then sternly cautioned Defendants against further disobedience and advised them that consequence included contempt of court:

[THE COURT:] [I]f the City doesn't comply with this second order telling you to do what I told you to do back then - . . . if I have to sign a third order to enforce my prior order, you know, things can then become unpleasant. . . Like as in very costly. Possibly somebody can be held in contempt.

Three weeks have passed since the Court's warning, yet Defendants still have not turned over many documents, including not a single electronic communication, admittedly within the scope of the Orders. Evidently, this Court's warning did not dissuade Defendants. Nor was it sufficient motivation for Defendants when this Court held in its April 2, 2019 Order in Aid of Litigants' Rights (the "Sanctions Order") that they had violated of the Court's Turn-Over Order and entered sanctions against them pursuant to R. 1:10-3. Indeed, the depth of the City's indifference to lawful judicial commands became even more apparent last week, at the status conference on April 15, 2019. Four months after the Turn-Over Order, two weeks after the Court's command to immediately comply or suffer "unpleasant" consequences, and almost a week after the deadline in the Sanctions Order to turn over "all documents," Jersey City admitted it had only just begun collecting 5,500 responsive emails which it conceded fall within the Court's Turn-Over Order and **had still not started review**. Instead, ignoring the Court's deadlines, Jersey City served a letter setting forth its own purported timeline to turn over the documents, May 10. The City, and the public officials charged with its operations, Mayor Steven Fulop, and Municipal Clerk Robert Byrne remain in open defiance of the Court's rulings.

Pursuant to R. 1:10-2, the Court is empowered to defend its authority against such attacks by holding willful violators in contempt. Defendants' history of flouting the Courts' orders—of which the Court is now all too familiar—makes clear that the only remedy that will uphold the administration of justice against such recalcitrance is the Court's initiation of a prosecution for contempt of court against Defendants.

II. STATEMENT OF FACTS

a. OJS's Open Public Records Requests Are Summarily Rejected By Defendants

The Court's December 28, 2018 Turn-Over Order, which Defendants have repeatedly violated, arises out of OJS's filing of OPRA requests with the City. OJS invested resources into a highly complex \$900 million real estate transaction, all of which has been placed into jeopardy by Defendants. For the past several years, progress on OJS's Journal Square development project has been obstructed by the City of Jersey City and Mayor Steven Fulop's issuance of a frivolous Notice of Default to terminate a Redevelopment Agreement and interference with financing for the redevelopment project, arising out of Fulop's political animus towards the owners of the development project. OJS filed a lawsuit, pending before the United States District Court for the District of New Jersey, captioned *One Journal Square Partners Urban Renewal Co. LLC, et al. v. Jersey City Development Agency, City of Jersey City, and Steven Fulop*, No. 2:18-cv-11148 alleging, among other things, violation of OJS's constitutional due process and equal protection rights, including Defendants' unequal treatment of Plaintiffs as compared to similar redevelopment projects in Jersey City with respect to permitting construction, PILOTs, and RABs.

Beginning on June 26, 2018, OJS submitted OPRA requests to the City seeking information regarding the City's treatment of OJS and various other property developers with respect to tax abatement applications. The City repeatedly represented they were "conducting its search and two additional weeks are needed," resulting in OJS consenting to three (3) two-week adjournments of the statutory seven business-day deadline for OPRA responses. At the City's request, OJS repeatedly narrowed their OPRA inquiries based on the City's representations that it would be more manageable to search and obtain such documents. After numerous delays, on September 12

and September 26, 2018 the City summarily denied all of Plaintiffs' OPRA requests. Defendants refused to produce any documents. See Compl., Fiorenzo Cert. Ex. A.

b. OJS Obtained A Turn-Over Order From The Court Compelling Defendants To Provide All Of "The Documents Requested" In OJS's OPRA Request

On September 28, 2018, OJS filed a Complaint in the Superior Court, Law Division, Hudson County, entitled One Journal Square Partners Urban Renewal Company LLC, et al. v. City of Jersey City and Robert Byrne, HUD-L003888-18 (the "OPRA Action"), before the Hon. Francis B. Schultz, J.S.C., to obtain access to the government records requested in all three denied OPRA requests. The proceedings were protracted including initial briefing, appearance for oral argument, two weeks of subsequent settlement discussions encouraged by the Court, preparation and appearance for a full hearing with witness testimony. The City dragged its feet the entire litigation increasing the burden on both OJS and the Court.

On November 30, 2018, the Court met in chambers with counsel to the parties and noted the lack of certification from the City or any witness statements in response to Plaintiffs' Order to Show Cause. As the Court later noted, the scope of the litigation "gr[e]w because there was nothing in certified form from the City backing up their position. It was like a legal conclusionary position . . . Had nothing specific – I believe I didn't have any certifications from anybody [at the City] -- . . . – so I had no choice but in order to give the City a fair shake at the hearing I allowed [the City] to amplify [its] position . . . with testimony." Fiorenzo Cert. Ex. H, Sanctions Hearing Tr. 36:10-25 (Apr. 2, 2019). The hearing was adjourned, and a five-hour evidentiary hearing with live testimony was conducted on December 13, 2018.

The Court granted Plaintiffs' Order to Show Cause on December 28, 2018 and ordered Defendants to provide all of "the documents requested" in Plaintiffs' three OPRA requests within 20 days.

[I]t is on this 28th day of December 2018, **Ordered** that the defendants shall provide the documents requested in OPRA request #1, amended OPRA request #2 and OPRA request #3 within twenty days of the date of this order, and **IT IS FURTHER ORDERED** that the plaintiffs shall be considered the “prevailing” parties for purposes of attorney ‘s fees

Fiorenzo Cert. Ex. B. The Court “noted that the City indicated that it was conducting its search and requested more time in response” in its communications with counsel for OJS regarding the OPRA requests. Ex. B, Op. at 2. But in reality, “[t]he court agrees with the plaintiffs that no real effort was made by the defendants to locate the requested documents. [The Clerk’s] testimony, while essentially credible, reflected an unwillingness to attempt to retrieve those documents. . .” Id. Among other things, the Court held that the documents requested were “easily identifiable” and capable of production, and that the City repeatedly stated it was conducting a search for such documents:

The court is well satisfied that the documents requested in OPRA request #1 (P-3) were readily identifiable records subject to disclosure under OPRA. No one contended that any of the exceptions applied. . . None of the three requests required discretion or “research” on the part of the defendants and these are not the type of documents which would have required a search that would have interrupted the agency operations. Even if they did (which they did not) the defendants did not attempt to reach a reasonable solution that would accommodate the interests of the requester and the agency.

Op. at 5.

c. For Three Months, Defendants Defy The Turn-Over Order, Forcing Plaintiffs To Obtain An Additional Order In Aid Of Litigants’ Rights Adjudicating The City In Violation Of Its Court-Ordered Obligations, With The Court Warning The City Of The “Unpleasant” Consequences If Defendants Stubbornly Persist In Noncompliance For A Third Time

Despite being reprimanded in the Judge’s written opinion for failing to even undertake a search for records, Defendants admittedly did not begin a good faith review for responsive documents following the Court’s order; nor did they produce any additional materials to OJS. Instead, Defendants waited until the last day of the Court’s January 17, 2019 deadline, using its

time and resources, to file a motion seeking a stay and a motion for leave to appeal. No stay was granted and the Appellate Division refused to accept the interlocutory appeal on February 15, 2019. Nevertheless, Defendants' persisted in their obstruction of the Court's Order.

Having received no documents in response to the Court's Turn-Over Order, on February 7, 2019, OJS filed a Cross-Motion in Aid of Litigants' Rights to enforce the December 28, 2018 Order. OJS also served numerous letters upon the City advising them that there was no justification for further disobedience of the Court's Order in light of the Appellate Division's rejection of the appeal and the absence of any stay of the Court's Order. See Fiorenzo Cert. Ex. C, Letters Feb. 27, Mar. 4, Apr. 3, Apr. 10, 2019. Defendants exhausted their procedural options and were bound to immediately comply or face the punishment of sanctions. They opted to continue their noncompliance.

On April 2, 2019, the Court heard oral argument on OJS's Motion in Aid of Litigants' Rights. Yet again, in response to OJS's motion and preparation for the appearance, Defendants steadfastly refused to even look at their records to identify the documents, much less produce the Court-ordered documents that were, by that point, over two-and-a-half months delinquent. Under questioning from the Court, it became clear there was no dispute that Defendants were in violation:

[THE COURT:] I get the impression though, that there's no dispute that the bulk of what I ordered has not been turned over.

MR. McKINNEY: No, Your Honor, there's not.

Fiorenzo Cert. Ex. H, Sanctions Tr. 44:11-15. The Court then noted that the City "had a lot of time since my order to comply," Tr. 61:20-22, and demanded to know "how far along are you now?" The City's response was: "**No, we haven't started it.**" Tr. 46:22-47:2 (emphasis added). Indeed, the City admitted: "There's been no effort at this point because of the ruling to work with the City." Tr. 51:5-6. Upon hearing the City's admission that not only had it violated the Order, it had yet to

even attempt to review responsive documents, the Court expressed its concern regarding a party's defiance of judicial authority, noting that all courts have "inherent authority to enforce [its] own orders." Tr. 42:2-43:6 The Court gave the City every opportunity to provide an explanation:

THE COURT: Well, let me ask the City, why didn't you -- after I entered my order and there was no stay and I wasn't asking to give up, you know, I wasn't asking you to give up some great government secrets. . . I was asking you to give up information regarding tax abatements. . . **But why have you ignored my order when it's been around for a couple of months already.** The Appellate Division didn't hear you on an interlocutory basis. I didn't grant any stay. Why didn't you just, you know -- you know, suck it up go there, get those documents and just give it to them?

MR. McKINNEY: Your Honor -- . . .

THE COURT: -- why didn't you just do it and, then, go file your appeal and be -- or not, whatever, and be on your way? Why didn't you -- **why didn't you obey my order?** Courts -- Courts -- all Courts have the inherent authority to enforce their own orders. And that can sometimes become very unpleasant. **And I am surprised that the City is ignoring the court order.**

Tr. 42:2-43:6 (emphasis added). But the City provided no remotely colorable explanation, offering that even though both a stay and interlocutory review were denied, it still wanted to appeal. The Court responded, "THE COURT: But you seem to be so clearly ignoring the fact that there is that order that hasn't been stayed." Tr. 55:13-15. With no stay in place, it did not matter that Defendants wanted to appeal, they were bound to obey now.

The Court held the City in violation of the Order, advised that it would be entering another order effective that same day "in aid of litigant's rights telling you to immediately comply and I'll put that on eCourts." Tr. 61:20-22. The Court also made clear to Defendants the severe consequence of persisting in their obstruction of lawful Orders:

THE COURT: -- if the City doesn't comply with this second order telling you to do what I told you to do back then --

MR. McKINNEY: I will instruct the Clerk's Office to begin complying tomorrow, Your Honor.

THE COURT: Pardon?

MR. McKINNEY: I will instruct the Clerk's Office to begin complying.

THE COURT: Yes, because, then, if I have to sign a third order to enforce my prior order, you know, things can then become unpleasant.

MR. McKINNEY: Understood.

THE COURT: Like as in very costly. Possibly somebody can be held in contempt.

Tr. 64:4-19 (emphasis added).

The Court entered an April 2, 2019 Sanctions Order in Aid of Litigants' Rights that declared Defendants to be in violation of the Court Order "as a result of Defendants' failure to comply with the outstanding Order dated December 28, 2018, requiring a turnover of those documents." Fiorenzo Cert. Ex. D, Order at 2 (Apr. 2, 2019). The Court compelled that "Defendants shall bring themselves in compliance with this Court's Order by turning over all documents as required by the December 28, 2018 Order within no later than seven (7) days." Id. (emphasis added). The Court also awarded counsel fees to Plaintiffs pursuant to R. 1:10-3 for contempt to advance the private interest of litigants and coerce compliance with a Court Order. Id.

OJS served a letter on April 3, Fiorenzo Cert. Ex. C, reminding the City that the Court stated it would consider further sanctions if Defendants continued to defy the Court by April 9, 2019. But the deadline passed for a third time, without Defendants turning over any records in response to this second Order or even responding. OJS gave Defendants yet another opportunity, serving an April 10, 2019 letter, Fiorenzo Cert. Ex. E, noting that Plaintiffs still had not received a single document since the entry of the Court's Turn-Over Order three months earlier nor any communication regarding when the City would bring itself into compliance. OJS warned that if it did not receive "all documents" responsive to the three OPRA requests immediately, as set forth

in the Turn-Over Order and Sanctions Order, it would have no alternative but file a motion for contempt against Defendants. Id.

d. Defendants Wait Until The Second Deadline To Begin Looking At Their Records—After Nine Months Of OJS’s Requests And Two Court Orders—They Identify Responsive Communications But Elect To Flout The Courts’ Orders And Refuse To Turn Over Documents

The day before the deadlines set forth in the Order in Aid of Litigants’ Rights, Defendants first began their search for records, as they have since admitted. Fiorenzo Cert. Ex. I, City’s Br. in Supp. Of Mot. to Stay ¶ 10. Defendants identified 5,500 email communications and 27 redwelds that are responsive to the Turn-Over Order and Sanctions Order. Fiorenzo Cert. Ex. J, City’s Mot. for Interlocutory Appeal. (Apr. 10, 2019). But instead of turning over a single one of the emails or other electronic documents that are admittedly compelled by the Court’s Orders, over 116 days after initially compelled to turn over the documents, Defendants willfully ignored the Courts ruling and refused production. On April 10, 2019, the day after the deadline, the City served a handful of documents from ordinance files, however, even these were woefully incomplete, and the deficient partial production did not include the responsive correspondence and emails.

Defendants also filed yet another application with the Appellate Division after the one previously denied on February 15, 2019. Even the Appellate Division, in denying the second of two motions for interlocutory relief on April 16, 2019, plainly stated Defendants’ immediate obligations: “The timing of the application suggests that the emergency is self-generated. . . Defendant was ordered by the trial court on December 28, 2018 to provide the sought-after documents. On February 22, 2019, this court denied defendant’s motion.” Fiorenzo Cert. Ex. K, at 2. Finally, on April 18, 2019, well beyond all conceivable deadlines for compliance, the City served a letter stating that they would take them an entire additional month, until May 10, 2019,

to turn over the documents. Fiorenzo Cert. Ex. K, at 1. The time has come to put a stop to Defendants' defiance of the Court's authority.

III. LEGAL ARGUMENT

POINT ONE

AN ORDER TO SHOW CAUSE SHOULD BE ENTERED TO COMPEL CONTEMPT PROCEEDINGS AGAINST THE CITY, MAYOR FULOP, AND CLERK BYRNE FOR THEIR REPEATED AND STUBBORN DEFIANCE OF THIS COURT'S OPRA ORDERS

a. R. 1:10-2 Empowers The Court To Punish "Contumacious" Violations Of A Court Order With Fines And Imprisonment

"A willful disobedience of a court's order constitutes a criminal contempt for which the offender may be prosecuted in proceedings instituted by the court on its own motion or upon the basis of information supplied by a litigant." Essex Cnty. Bd. of Taxation v. Newark, 139 N.J. Super. 264, 270 (App. Div. 1976). The procedure for the filing of summary contempt proceedings is set forth in Rule 1:10-2:

(a) Institution of Proceedings. Every summary proceeding to punish for contempt other than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of _____ Charged with Contempt of Court."

(b) Release Pending Hearings. A person charged with contempt under R. 1:10-2 shall be released on his or her own recognizance pending the hearing unless the judge determines that bail is reasonably necessary to assure appearance. The amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.

(c) Prosecution and Trial. A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney General, the County Prosecutor of the county or, where the court for good cause designates an attorney, then by the attorney so designated. The matter shall not be heard by the judge who instituted the prosecution if the appearance of objectivity requires trial by another judge. Unless there is a right to a trial by jury, the court in its discretion may try the matter without a jury. If there is an adjudication of contempt, the provisions of R. 1:10-1 as to stay of execution of sentence shall apply.

b. Local Government Officials’ Defiance Of Valid Court Orders Is Particularly Egregious Because It Inflicts Systemic Harm To The Judiciary’s Authority, Justifying Exercise Of The Court’s Inherent Power To Find Contempt Of Court And Impose Punitive And Coercive Measures Of Fines And Imprisonment

The Supreme Court has repeatedly cautioned that a systemic threat to judicial authority emerges when litigants—particularly public officers—flout the trial court’s commands, warranting immediate coercive action. The “orderly processes of the administration of justice is necessarily dependent on full compliance with all lawful orders of the courts.” In re Tiene, 17 N.J. 170, 181 (1954). In courts’ relations with other units of state or local government, the rule of law hinges on courts’ ability to “compel immediate compliance if the court is to be equal to its responsibility under government.” In re Fair Lawn Educ. Ass’n, 63 N.J. 112, 115-16 (1973). Indeed, “[i]t is of no moment that the recalcitrant defendants are public officials . . . prosecution for criminal contempt is universally recognized as particularly appropriate in the case of those, including public officials, who have willfully violated court orders or judgments in the nature of mandamus requiring the performance of duties imposed by law.” Essex Cnty. Bd. of Taxation v. Newark, 139 N.J. Super. 264, 271 (App. Div. 1976). Failure to vigilantly police such public wrongs risks further “willfulness, an indifference to the court’s command . . . challeng[ing] the authority of government” Dep’t of Health v. Roselle, 34 N.J. 331, 337(1961).

Faced with this threat, the Supreme Court has vested trial courts with the “power to deal by a summary process with defiance of court orders.” In re Buehrer, 50 N.J. 501, 515 (1967). “To prevent recalcitrant individuals from frustrating their work, the courts are necessarily empowered to punish for contempt.” Tiene, 17 N.J. at 181. This summary process includes redressing any “[d]isobedience or resistance[] to any lawful writ, process, judgment, order, or command of the court.” Dep’t of Health v. Roselle, 34 N.J. 331, 342 (1961). Swift prosecution furthers the

“systemic interests” of maintaining public respect for the judiciary’s authority, Pressler & Verniero, Current N.J. Court Rules, Comment 1 on R. 1:10-2, and also the “purpose of punishing a defendant who fails to comply.” Pasqua v. Council, 186 N.J. 127, 140 (2006). “[C]ourts accordingly have no choice, if they are to do their duty in administering justice, but to punish” those who “deliberately flouted the lawful subpoenas and orders of the courts.” Tiene, 17 N.J. at 181. Thus, when a litigant disregards an order’s requirements, it “mandates a coercive remedy.” In re Fair Lawn Educ. Ass’n, 63 N.J. at 116.

Not only do violations harm the Court’s constitutional authority, they compound the injury to the aggrieved party’s rights. An order is more than merely a statement of a party’s obligations, it represents adjudication of “an underlying wrong *already* done or threatened” by the defendant. In re Fair Lawn Educ. Ass’n, 63 N.J. 112, 115-16 (1973) (emphasis added). Without “prompt prosecution, the prevailing litigant could be delayed in the enjoyment of his rights or even be denied them” In re Buehrer, 50 N.J. 501, 515 (1967).

The finding of contempt of court requires that the party have knowledge of a written order; the capacity to comply with the order; and the intent to willfully disobey. See Pressler & Verniero, Current N.J. Court Rules, Comment 3.1 and 4.3 on R. 1:10-2. When a public entity violates a court order, the court has the power, upon reasonable notice, to find in contempt both the “public official individually” and the “public body.” Pressler & Verniero, Current N.J. Court Rules, Comment 3.1.3 (“Public-official conduct”) on R. 1:10-2.

Just like any other individual, Mayor Fulop and Clerk Byrne are required to comply with the Court’s Orders. When they failed to heed the Turn-Over Order and the Sanctions Order directed at their public office, they threatened the legitimacy of the Court’s authority. Pursuant to

R. 1:10-2, with notice provided by an order to show cause, they should be held individually accountable for their defiance of valid judicial commands.

c. Defendants’ Flagrant Disregard For The Court’s Orders Entered Over Four Months Ago—including Failure To Even Begin Examining Records After The Entry Of Two Court Orders—Falls Squarely Within Punishable “Contumacious” Conduct

Defendants have inexcusably refused to obey the Court’s December 28, 2018 Order for over 116 days. As set forth more fully below, Defendants are fully aware of their obligations from two validly entered Court orders and a half dozen letters from Plaintiffs. As the Court expressly held, and as Defendants now admit, there are identifiable emails sitting in town hall subject to the Order. They have the ability to comply, but have stubbornly and willfully elected to defy this Court’s authority. They have ignored the OPRA statute, the Turn-Over Order, and the Sanctions Order. It is clear that nothing—not a written command, letter, gentle suggestion, or stern admonition—will bring these recalcitrant parties into compliance short of a finding of contempt of Court.

The only reasonable conclusion that may be drawn from Defendants’ persistent disobedience is willfulness. This Court’s December 28, 2018 Order declared that “the defendants shall provide the documents requested in OPRA request #1, amended OPRA request #2 and OPRA request #3 within twenty days of the date of this Order.” Fiorenzo Cert. Ex. B, Turn-Over Order at 1 (Dec. 28, 2018). The City’s response to the Court Order was nothing short of open defiance.

On January 2, 2019, days after the Turn-Over Order, Mayor Fulop published a comment on Twitter criticized the Court’s OPRA Turn-Over Order, stating that the “taxpayers should not be required to subsidize a pointless fishing expedition” and proclaiming “[i]t is absurd and isn’t going to happen in Jersey City.” Fiorenzo Cert. Ex. F. Defendants know exactly what compliance entails, as they admitted in their stay application, they are in possession of “communications which

would have required research by the City to process,” Fiorenzo Cert. Ex. I, City’s Mot. to Stay at 3 dated Mar. 8, 2019, including “5500 email[s]” and 24 redwelds, Fiorenzo Cert. Ex. J, City’s Mot. for Interlocutory Appeal dated Apr. 10, 2019. The City concedes not a single of these identified emails has ever been turned over pursuant to the Courts’ Orders. Fiorenzo Cert. Ex. H, Tr. 44:11-15. Clearly, they are capable of complying with the Courts’ Orders: they have identified the documents responsive to the Orders and counted them.

After the Turn-Over Order was entered, Defendants have been given every conceivable opportunity to bring themselves into compliance. Plaintiffs repeatedly served letters upon Defendants identifying that the deadlines had long since passed, seeking information as to when Defendants would fulfil their court-ordered obligations, and noting that continued failure would prompt additional action. See Fiorenzo Cert. Ex. C, Pls.’ Letters Feb. 27, Mar. 4, Apr. 3, Apr. 10, 2019. In several applications to the Court, Plaintiffs requested that the Court address Defendants’ obstruction: in Plaintiffs’ January 30, 2019 fee application, February 7, 2019 Motion in Aid of Litigants’ Rights, and in a letter to the Court dated March 18, 2019 requesting a status conference to bring the Defendants’ stalling tactics to an end.

The Court, too, made Defendants aware that they were in material violation of the Order. On April 2, 2019, the Court noted how it was inexplicable that the City still had not turned over any of the documents sitting in town hall to Plaintiffs. Fiorenzo Cert. Ex. H, Tr. 42:2-43:6 (“[W]hy have you ignored my order when it's been around for a couple of months already . . . why didn't you obey my order? Courts -- Courts -- all Courts have the inherent authority to enforce their own orders. And that can sometimes become very unpleasant. And I am surprised that the City is ignoring the court order.”); Tr. 45:23-46:7 (“that the City is really ignoring a court order [Plaintiffs’ counsel is] right on that mark”); Tr. 52:2-3 (“you still haven't complied with the order”). The Court

instructed the City that it was entering an Order in Aid of Litigants' Rights to enforce the December 28, 2018 Order in the face of their noncompliance, and warned Defendants that there would be consequences for not heeding yet another order: a finding of contempt, including "very costly" fines. Tr. 64:4-19. The Court also enumerated Defendants' violations of the Turn-Over Order in a written Sanctions Order dated April 2, 2019. Fiorenzo Cert. Ex. D. It recited Defendants' continuing "failure to comply with the outstanding Order dated December 29, 2018, requiring a turnover of those documents" and demanded that Defendants "bring themselves in compliance with this Court's Order by turning over all documents as required by the December 28, 2018 Order within no later than seven (7) days," on or before April 9, 2019. Ex. D, Sanctions Order (Apr. 2, 2019) (emphasis added).

But April 9 came and went without Defendants producing a single one of the 5,500 emails they identified. Defendants did not produce the 27 redwelds. Instead, the City made a paltry partial production of several ordinance files, which was nothing more than a transparent attempt to feign compliance with the Order. Even the few ordinance files produced were incomplete and missing documents, including some tax abatement applications that are the key to OJS' OPRA requests. It is particularly egregious that these ordinance files were not turned over nine months ago when Plaintiffs filed the OPRA Requests in 2018, and are only now being employed as an attempt to feign compliance. It is clear that Defendants know their legal obligations; understand they are in violation; and have voluntarily elected to proceed with disobeying Court orders.

Even more concerning, it is only at this stage — after statutory OPRA requests, months of negotiation over the scope, a settlement conference, a full evidentiary hearing, two court Orders for production, and motions for fees and in aid of litigants rights — that Defendants admit that they never even attempted to identify and review the Court-ordered documents until now. As of

the April 2, 2019 hearing, Defendants admitted that in the four months after the Order there had “been no effort” to comply. Fiorenzo Cert. Ex. H, Tr. 51:5-6. Even though the Court in its December 28, 2018 opinion reproached the City because “no real effort was made by defendants to locate the requested documents,” Fiorenzo Cert. Ex. B, Op. at 5, apparently the City sat on its hands for another four months. And in their recent Motion to Stay, Defendants concede that they only “began preparing documents and made documents available to Plaintiff on the City of Jersey City’s Open Public Records Act portal system on April 8, 2019.” Fiorenzo Cert. Ex. I, City’s Br. in Supp. Of Mot. to Stay ¶10. The City’s previous pleas for additional time because it was “conducting its search and two additional weeks are needed” to obtain three (3) two-weeks extensions were nothing but misrepresentations for the purpose of delay. It is hard to imagine clearer evidence of willful disrespect for the Court’s resources and orders than forcing Plaintiffs and the Court to compete a complex OPRA litigation spanning hundreds of hours of work before the City even sees fit to look at its own records. If the City had spent a fraction of the effort it has invested in obstructing the lawful orders of the Court, turn over of the government records would have been completed and compliance achieved long ago. It is a plain affront to the Court’s authority, and an abuse of the justice system. It demands coercive and punitive action.

Courts have not hesitated to find contempt for far less egregious or obstinate behavior by public officials. See In re Buehrer, 50 N.J. 501, 505 (1967) (affirming contempt finding against public school official for single day of disobedience with Court Order). Indeed, they have repeatedly punished public officials, precisely like Defendants, who had full knowledge of the Courts Order and made a decision to ignore it. See id.; Tiene, 17 N.J. at 181 (affirming contempt against freeholders for defiance of subpoena); Essex Cnty. Bd. of Taxation v. Newark, 139 N.J. Super. 264, 270-71 (App. Div. 1976) (finding that prosecution for contempt against mayor, a

municipal council, a finance director, a city clerk, and a tax assessor was “fully justified” by their failure to comply with Court-ordered revaluation, remanding for procedural reasons); In re Daniels, 118 N.J. 51, 53 (1990) (affirming finding of contempt for state-employed lawyer’s disrespect of court after being ordered to cease). Particularly, courts have routinely punished public officials’ refusal to comply with open public records acts, either out of obstinacy or the avoidance of public scrutiny. See, e.g., Landmark Legal Foundation v. E.P.A., 272 F. Supp. 2d 70 (D.D.C.2003) (holding agency in contempt for violation of federal analogue of OPRA, the Freedom of Information Act (FOIA)); Judicial Watch, Inc. v. United States Dep’t of Commerce, 34 F. Supp. 2d 28, 30 (D.D.C. 1998) (sanctioning agency for “egregious” misconduct following entry of FOIA order); Jefferson v. Reno, 123 F. Supp. 2d 1, 6 (D.D.C. 2000) (sanctioning department of justice for failure to comply with FOIA order). Here, the Defendants’ willful failure to comply with two valid Court Orders compelling documents admittedly identified and in their possession falls well within contumacious conduct punishable by contempt. The Court should enter an Order pursuant to R. 1:10-2 initiating contempt proceedings against Defendants.

d. After Prosecution And Finding Of Contempt Against Defendants, The Court Has A Full Panoply Of Measures At Its Disposal To Remedy The Harm And Coerce Compliance

The purpose of contempt sanctions may be both coercive, i.e. to induce the public official to comply, and punitive, i.e. to redress the official’s harm done to justice by the official’s failure to obey the Court’s judgments, see In re Buehrer, 50 N.J. 501, 509 (1967); see also Pressler & Verniero, Current N.J. Court Rules, Comment 1 on R. 1:10-2 (“[I]t is well settled that the contempt may be responded to by either punitive or coercive measures or both”). This includes remedies such as: a judicial finding of contempt; fines; and/or incarceration. Both individuals and entities may be punished by “a fine in an amount commensurate with the wrong.” In re Fair Lawn Educ.

Ass’n, 63 N.J. 112, 118 (1973). However, punishment based upon a summary finding of contempt “may not exceed six months imprisonment, subject to the probation, or a fine of \$1,000.00 or both.” Pressler & Verniero, Current N.J. Court Rules, Comment 1 on R. 1:10-2; id. Comment 3.3. Similarly, the “injured litigant may be awarded damages to compensate for interim loss of the benefit of the order which was dishonored.” Dep’t of Health v. Roselle, 34 N.J. 331, 338 (1961).

Here, Defendants’ conduct, including public statements demonstrating pride in their violation of the Court’s commands, compel a finding of contempt, along with whatever punitive and coercive measures necessary to induce compliance and deter future violations.

POINT TWO

DEFENDANTS SHOULD BE SANCTIONED PURSUANT TO R. 1:10-3, AND COERCIVE RELIEF ENTERED INCLUDING PAYMENT OF ATTORNEYS’ FEES IN THE PREPARATION OF THIS MOTION AND INCARCERATION UNTIL DEFENDANTS COMPLY WITH THE COURTS’ ORDERS

R. 1:10-3 provides, in relevant part:

Notwithstanding that an action or omission may constitute a contempt of court, a litigant in any action may seek relief by application in the action ... The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule.

Notably, the Court has already found the City to be in contempt of OJS’ private rights pursuant to R. 1:10-3 for violation of the Turn-Over Order. Defendants’ continued violation requires escalating sanctions. Particularly, pursuant to R. 1:10-3 “incarceration may be ordered . . . where the sting of monetary penalties appears inadequate.” Pressler & Verniero, Current N.J. Court Rules, Comment 4.4.2 on R. 1:10-3. However, “the confinement must be terminable upon the party’s compliance with the order disobeyed.” Id. (citing Essex County Welfare Bd. v. Perkins, 133 N.J. Super. 189 (App. Div.), certif. den. 68 N.J. 161 (1975)).

Rule 1:10-3 also authorizes an award of damages to the private party whose rights have been injured by Defendants' violations of a Court Order. Greer v. New Jersey Bureau of Securities, 288 N.J. Super. 69, 86 (App. Div. 1996). The monetary award "is not necessarily limited to the amount of the aggrieved party's actual damage," rather, it should be set at an amount to coerce the recalcitrant party to obey the Court's Order. Pressler & Verniero, Current N.J. Court Rules, Comment 4.4.3 on R. 1:10-3.

Defendants' conduct, as discussed in more detail above, additionally warrants further findings of private contempt pursuant to R. 1:10-3.

POINT THREE

THE COURT SHOULD AWARD ATTORNEYS FEES PURSUANT TO THE OPRA STATUTE

OPRA requires courts to award attorneys' fees to the prevailing party in furtherance of the enforcement of its statutory rights. N.J.S.A. 41:1A-6 provides: "A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." This motion was filed to promote compliance with the OPRA statute and the Court's OPRA Orders, accordingly, OJS respectfully requests an award of attorneys' fees and costs. At the conclusion of this application, OJS will supply a certification of attorney services as required by the Court Rules.

IV. CONCLUSION

For the foregoing reasons, the Court should enter an Order to Show Cause initiating prosecution against Defendants for Contempt of Court, including the penalties of fines, incarceration, and payment of the One Journal Square Companies' attorneys' fees.

Respectfully submitted,

SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiff

DATED: May 1, 2019

/s/ Joseph B. Fiorenzo
JOSEPH B. FIORENZO